(2)

GA 1967/97

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

CF0000061246

APPEAL OF PRISONER

No. 5885 Name कोंदा उर्फ भगवती

Father's name श्री उमेद, ग्राम :- टोनाटार, थाना - भाटापारा (छत्तीस)

Residence जिला - रायपुर (मध्य) Age 25 वर्ष

Sentenced to सश्रम आजीवन कारावास On 9-7-97

Under section 302 भा० द० वि० by अति० सत्र न्यायाधीश - बलौदाबाजार जिला - रायपुर (म.प्र.)

जुर्माना - 5 हजार रुपये या 1 वर्ष सश्रम

S.T. नं० 23/94

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received .....

3 Date on which Appeal sent ..... 30/8/97 .....

4 Whether the prisoner wishes to be represented or not – Yes / No

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No. 5885 Name कोंदा उर्फ भगवती S/o उमेद

Confined in केन्द्रीय Jail रायपुर (म०प्र०)

No. 293/विधि/97 Dated 30/8/1997

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ अतिरिक्त पंजीयक महोदय, माननीय उच्च न्यायालय म०प्र० जबलपुर

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न :- सत्र प्रकरण क्रमांक 23/94 की सत्यापित निर्णय प्रतिलिपि

Superintendent,
Central Jail, Raipur. (M.P.)
Jail

Date of receipt in ..... office .....

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

No ..... Dated 199

Forwarded to the ..... High Court of Madhya Pradesh, JABALPUR.

Recd. on - 9 SEP 1997

Date of receipt in Appellate Court Registration No. 620

Receipt Clerk
High Court, Jabalpur.

(P. T. O.)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर.

आदेश पत्रक

मामला क्रमांक G.A. 1907/97 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश.

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

20-4-2006

Mr. Praveen Das, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. M.P.S. Bhatia, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J: -

By this appeal under Section 374 (2) of the Code of Criminal Procedure, the accused/appellant has questioned legality and correctness of the judgment of conviction and order of sentence dated 9-7-97, passed by the Additional Sessions Judge, Baloda Bazaar, in Sessions Trial No.23/94, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for one year.

The case of the prosecution, in brief, is that Rakesh Kumar Verma (PW-1) gave the Dehati Nalishi (Ex.P-1) in Police Station: Bhatapara on 23-9-93 at 0050 hours to the effect that he is resident of Village: Tonatar and he is residing in the village along with his mother Bena Bai, wife, one son aged 4 ½ years, and one daughter aged six months. On 16-9-93, his wife had gone to her maternal home and he was busy in election campaign, therefore, his mother

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आदेश पत्रक

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Bena Bai used to remain in the house all alone. On 22-9-93, when he returned in the night after election campaign at about 10.30 p.m., he knocked the door 2-3 times, but there was no response. He also called his mother, but there was no response. As his mother used to open the door on first or second call, he was wondering as to what has happened. Therefore, with the help of old tractor tyre, he climbed on the roof of the house from back side and started coming down from stairs, one bulb was burning in the Parchi of kitchen and in the light he saw that his mother was lying flat in the courtyard and Bhagwati, the accused/appellant herein, was sitting on her chest, he was looking here and there, therefore, he was able to identify him. Seeing the scene, he became terrified and picked up a piece of asbestos pipe, when Bhagwati started coming towards his side then he assaulted Bhagwati with that pipe. The assault was protected by Bhagwati by his hand as a result of which the pipe was broken. He caught Bhagwati from the waist and he saw that clothes of Bhagwati were drenched with blood. He started raising cries calling his cousin brothers Gend & Lekh. Hearing his screams, somebody knocked the door, therefore, he dragged Bhagwati up to the door and opened the door. On opening the door, Gend, Lekh & Dhanuram Verma came inside the house and they caught hold of the accused. He saw his mother, but there was no movement in the body of his mother and whole body was smeared with blood. Even blood was present on the ground also. One wooden chair was lying in broken condition and there was blood on the wooden chair also.

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आदेश पत्रक

मामला क्रमांक G.A.1907/17 सन् ~~200~~

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Receiving this first information report Ex.P-1 and merg intimation Ex.P-2 given by Rakesh, the Investigating Officer left for the scene of occurrence. After giving notice Ex.P-3 to the Panchas, he prepared the inquest report (Ex.P-4) of the dead body of Bena Bai. One bush-shirt was taken into possession under Ex.P-5 on being produced by Rakesh Verma. Site plan Ex.P-7 was prepared. Cement plaster stained with blood and plain cement plaster were taken into possession under Ex.P-8. One broken piece of wooden chair stained with blood, one broken piece of wooden chair stained with blood, hairs which were found in the fist of Bena Bai, one torch, one knife and a piece of asbestos pipe were taken into possession under Ex.P-9. One bush-shirt and full pant of the accused, which were stained with blood, were taken into possession under Ex.P-10. Hairs of the head of the accused were taken into possession under Ex.P-12. Clothes of the deceased were taken into possession under Ex.P-13. The accused was examined by Dr. R.S. Tiwari who prepared the injury report Ex.P-14. The Station House Officer based on the merg intimation and other papers registered the F.I.R. (Ex.P-15). Post-mortem on the body of Bena Bai was conducted by Dr. Prakash Joshi (PW-13) and he prepared the report Ex.P-26. He opined that the cause of death is asphyxia as a result of strangulation. Blood stained articles were sent for chemical examination to Forensic Science Laboratory, Raipur, from where report Ex.P-25A was received and Serologist report Ex.P-25 was also received.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Baloda Bazaar, who in turn committed the case

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(21)

आदेश पत्रक

मामला क्रमांक G.A. 1907/97 सन् ~~200~~

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to the Sessions Judge, Raipur, from where learned Additional Sessions Judge, Baloda Bazaar, received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined 13 witnesses. Statement of the accused under Section 313 of the Cr.P.C. was recorded in which he denied the prosecution evidence and stated that he is innocent and he has been falsely implicated in the case by Rakesh & Nirmal.

After hearing learned counsel for respective parties, learned Additional Sessions Judge convicted and sentenced the accused as mentioned in para 1 of this judgment.

We have heard Mr. Praveen Das, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. M.P.S. Bhatia, learned Panel Lawyer on behalf of the State/respondent.

The homicidal death of Bena Bai is not in dispute. Dr. Prakash Joshi (PW-13) who conducted post-mortem on the body of deceased Bena Bai has stated that there were 12 injuries on the body of the deceased, her 6th, 7th & 8th ribs of left side and 5th, 6th & 7th ribs of right side were found fractured and the cause of death was asphyxia due to strangulation.

As far as involvement of the accused/appellant in the crime in question is concerned, Rakesh Kumar (PW-1), who is son of the deceased, has stated in his evidence that on the fateful night at 10.30 to 10.45 he reached his house and knocked the door. When the door was not opened, he climbed on the roof

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आदेश पत्रक

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of the house from behind and saw that his mother was lying flat in the courtyard of the house, the accused was sitting on her chest and pressing her neck with both the hands and he was looking here and there. After climbing on the roof of the house, he got down with the help of a cement pipe and thereafter, he caught hold of accused Bhagwati and started raising cries on which neighbourers came, they saw the accused and thereafter, they tied hands & legs of the accused with a rope. Thereafter, he saw his mother, but she was already dead. There was a cloth round the neck of her mother. The wooden stool and other articles were lying stained with blood. Thereafter, he telephoned to the Police Station and lodged the report Ex.P-1.

Dhanuram (PW-2) & Gend Bihar @ Gendram (PW-3) have corroborated the evidence of Rakesh Kumar (PW-1) and they have stated in their evidence that on hearing the screams of Rakesh they went towards the house of Rakesh and on opening the door they saw that accused Bhagwati was present there and he was caught hold by the villagers and thereafter, they saw that Bena Bai was already dead.

Blood stained clothes of the accused & the deceased and bloodstained articles were taken into possession from the place of occurrence, and as per the Serologist report (Ex.P-25) and the F.S.L. report (Ex.P-25A), same were found stained with human blood. In cross-examination of these three witnesses (PW-1, PW-2 & PW-3), defence has not been able to elicit any circumstance whereby the evidence of these witnesses can be held to be unreliable or untrustworthy. Nothing has come on record, which shows that the

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(23)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

6

आदेश पत्रक

मामला क्रमांक G.A.1907/97 सन् ~~200~~

विरुद्ध

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accused has been roped in on account of animosity or other ground. The evidence of these three eyewitnesses is consistent, reliable and cogent. Therefore, we do not find any illegality or infirmity in the judgment of the trial Court holding the accused/appellant for commission of the murder of Bena Bai.

In the result, we do not find any substance in this appeal, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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